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July 25, 1997

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JUL 25 1997

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Ms. Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

Re: Ex Parte

CPD 97-24

**Southwestern Bell Telephone Letter
Regarding Interconnection Between
Paging Carriers and Local Exchange
Carriers**

CC Docket No. 96-98

**Implementation of the Local Competition
Provisions of the Telecommunications
Act of 1996**

CC Docket No. 95-185 /

**Interconnection Between Local Exchange
Carriers and Commercial Mobile Radio
Service Providers**

Dear Ms. Keeney:

The above-referenced proceeding was initiated to address a request by Southwestern Bell Telephone Company ("SWBT") for a ruling by the Common Carrier Bureau that LECs may charge paging carriers for LEC-originated traffic terminated on paging carrier systems.¹ Paging Network, Inc. ("PageNet") and two other paging companies responded to the SWBT

¹ See Public Notice, DA 97-1071 (released May 22, 1997). See also Letter from Paul E. Dorin, SWBT, to Regina M. Keeney, Chief, Common Carrier Bureau, dated April 25, 1997 ("SWBT Letter").

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Letter on May 16, 1997, seeking dismissal of SWBT's request.² These parties demonstrated that SWBT had made an untimely request for reconsideration of the *First Report and Order* in CC Docket No. 96-98 because Section 51.703(b) of the Commission's Rules already clearly prohibited such charges for the delivery of one-way paging traffic, whether assessed on a usage basis or on a monthly recurring basis. In response to the FCC's *Public Notice* seeking further comment on the *SWBT Letter* and the paging carriers' response, the paging industry as a whole demonstrated how Section 51.703(b) sufficiently resolved the issue against SWBT.

Nonetheless, SWBT and other LECs contended that the Commission rule governing the charges SWBT sought to impose was Section 51.709(b), *not* Section 51.703(b). Because that section had been stayed by the U.S. Court of Appeals for the Eighth Circuit, they argued, clarification was necessary concerning the propriety of the charges at issue. Assuming *arguendo* that SWBT was correct, and Section 51.709(b) was somehow relevant to charges for the delivery of one-way paging traffic when the LEC chooses to characterize such charges as facilities charges,³ the Eighth Circuit's decision on July 18, 1997, makes SWBT's request moot.⁴ The Eighth Circuit's opinion specifically upheld both Section 51.703(b) *and* Section 51.709(b). Consequently, there is no question remaining to be resolved: Under the interpretation of these two rules by *either* PageNet and the paging industry *or* SWBT and supporting LECs, LECs may *not* charge paging carriers for the delivery of one-way traffic to paging carriers, either per a usage-based charge or a monthly, flat rate charge.⁵

Accordingly, the Commission should promptly reject the request in the *SWBT Letter* and remove any unjustified confusion its filing may have engendered. When dismissing SWBT's request, the Commission should take the opportunity to underscore that LECs may assess neither usage-based nor flat-rated charges for the delivery of LEC-originated traffic.

² See letter from Kathleen Q. Abernathy, Airtouch Communications, Inc.; Mark A. Stachiw, AirTouch Paging; Cathleen A. Massey, AT&T Wireless Services, Inc.; and Judith St. Ledger-Roty, Kelley Drye & Warren, LLP (for PageNet) to Ms. Keeney, dated May 16, 1997.

³ PageNet reiterates that Section 51.703(b), not Section 51.709(b), addresses such charges between LECs and paging carriers.

⁴ *Iowa Utilities Board v. FCC, et al.*, No. 96-3321 and consolidated cases, slip op., (8th Cir., July 18,, 1997).

⁵ As PageNet explained in its June 27, 1997, reply comments, the additional issues raised by many LECs in their comments are untimely requests for reconsideration, petitions for rulemaking that cannot be addressed in this proceeding, or matters to be addressed in the Commission's consideration of reconsideration petitions in Docket 96-98.

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Three sets of two copies each of this letter are being filed with the Secretary's office for inclusion in each of the above-referenced proceedings.

Please contact the undersigned if there are any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. St. Ledger-Rory", with a stylized flourish at the end.

Judith St. Ledger-Rory

Edward A. Yorkgitis, Jr.

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